

STATE OF CALIFORNIA

Public Utilities Commission  
San Francisco

## Memorandum

**Date:** May 23, 2005

**To:** The Commission  
(Meeting of May 26, 2005)

**From:** Delaney L. Hunter, Director  
Office of Governmental Affairs (OGA) — Sacramento

**Subject:** **SCR 40 (Lowenthal)** Relative to preservation of state authority  
over siting of liquefied natural gas facilities.  
As Amended May 19, 2005

### **Legislative Subcommittee Recommendation:** Support

**SUMMARY:** This resolution calls on the President and Congress to preserve state and local authority over the siting of liquefied natural gas (LNG) facilities. The resolution effectively opposes the provisions of H.R. 6, the House energy bill, that grant the Federal Energy Regulatory Commission (FERC) exclusive jurisdiction over the siting of LNG facilities.

**ANALYSIS :** SCR 40 supports the Commission's position that it has jurisdiction over LNG facilities in California. The resolution further supports the Commission's legal case relative to this matter.

### **STATUS**

SCR 40 passed out of the Senate Energy, Utilities and Communications Committee on a vote of 6-3 and is now pending action on the Senate floor.

### **LEGISLATIVE HISTORY**

SB 426 (Simitian) and SB 1003 (Escutia) also deal with the siting of LNG facilities. The companion measures would set up a new review process at the Energy Commission that would determine the need for LNG, a ranking of proposed LNG projects and selection and permitting of the best LNG project. Both measures will be heard in the Senate Appropriations Committee on May 26, 2005.

**SUPPORT/OPPOSITION (as of May 3, 2005)**

Support:

Sierra Club of California

Opposition:

None on file

**LEGISLATIVE STAFF CONTACT**

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**Date:** May 23, 2005

BILL NUMBER: SCR 40      AMENDED  
BILL TEXT

AMENDED IN SENATE    MAY 19, 2005

INTRODUCED BY    Senators Lowenthal and Vincent  
    (    Coauthors:    Senators    Bowen,  
         Kuehl,    and Perata    )  
    (Coauthors: Assembly Members Dymally,    Goldberg,  
Karnette, ~~and Oropeza~~    Laird,  
Oropeza,    Pavley,    and Ridley-Thomas    )

APRIL 7, 2005

Relative to preservation of state authority over siting of  
~~liquified~~    liquefied    natural gas  
facilities.

LEGISLATIVE COUNSEL'S DIGEST

SCR 40, as amended, Lowenthal. Liquefied natural gas facilities.

This measure would memorialize the President and Congress to take necessary action to preserve state and local authority over the siting of ~~liquified~~    liquefied    natural gas facilities.

Fiscal committee: no.

WHEREAS, The California Constitution establishes the Public Utilities Commission, with jurisdiction over all public utilities; and

WHEREAS, The California Constitution grants the commission certain general powers over all public utilities subject to its jurisdiction, including the ability to establish rules, subject to control by the Legislature; and

WHEREAS, The California Constitution provides that all private corporations and persons that own, operate, control, or manage a line, plant, or system for the production, generation, transmission, or furnishing of heat, light, or power directly or indirectly to or for the public are public utilities subject to control by the Legislature; and

WHEREAS, Under the Public Utilities Act, a gas corporation is a public utility subject to the jurisdiction of the commission, and includes every corporation or person owning, controlling, operating, or managing any gas plant for compensation within the state, with certain exceptions; and

WHEREAS, Under the Public Utilities Act, a gas plant includes all real estate, fixtures, and personal property, owned, controlled, operated, or managed in connection with, or to facilitate the production, generation, transmission, delivery, underground storage, or furnishing of, gas, natural or manufactured, except propane; and

WHEREAS, Under the Public Utilities Act, the commission is authorized, after a hearing, to require every public utility to construct, maintain, and operate utility facilities in a manner so as to promote and safeguard the health and safety of its employees, customers, and the public ~~and requires~~, and every gas corporation *is required* to obtain a certificate of public convenience and necessity before constructing any gas plant, line, or extension; and

WHEREAS, California natural gas consumers may receive substantial benefit from a liquefied natural gas (LNG) facility in California and those consumers have a direct interest in the siting of an LNG facility; and

*WHEREAS, It is in the public interest for the state to conduct an orderly and comprehensive public assessment of the impacts of the construction and operation of LNG facilities on the economy, consumers, the environment, and the public health and safety; and*

WHEREAS, The Federal Energy Regulatory Commission (FERC) is composed of five commissioners appointed by the President with the advice and consent of the Senate, for five-year terms, and ~~have~~ each commissioner has an equal vote on regulatory matters; and

WHEREAS, Section 7 of the Natural Gas Act (15 U.S.C. Sec. 717f) authorizes FERC certification of onshore LNG facilities involving interstate pipelines; and

WHEREAS, ~~FERC is embroiled in a dispute with California over the jurisdiction for the approval of LNG terminals and the FERC's opposition to meaningful state and local involvement in LNG facility siting has led to a dispute with the California Public Utilities Commission over the extent of FERC's jurisdiction over onshore LNG facilities serving intrastate pipelines, and the issue is currently before the United States Court of Appeals for the Ninth Circuit for resolution; and~~

WHEREAS, Eighteen members of ~~congress~~ the Congress of the United States have filed an amicus (friend of the court) brief on behalf of the Public Utilities Commission's Commission in its dispute with FERC; and

WHEREAS, In the amicus brief, Congressman Ed Markey writes: "... While my 1979 LNG siting bill clearly envisioned a federal role in the siting of new LNG facilities, it also directed that such facilities be remotely located. Unfortunately, the Transportation Department and FERC have failed to follow that directive. At the same time, my bill never preempted State public safety and emergency response authorities, reflecting Congress' view that State Governments needed to be able to take action to protect their populations from hazards represented by proposals to site new LNG facilities in densely populated urban areas. The amicus brief that we've filed reflects Congressional support for retention of such authorities by the States."; and

~~WHEREAS, Because resolution of the dispute through the courts~~

~~could take years, FERC is supporting legislation currently before Congress to grant FERC exclusive jurisdiction over the siting of LNG import terminals and to therefore preclude any state or local government from having any decision making authority with respect to the siting of LNG import terminals; and~~

~~WHEREAS, FERC is supporting legislation currently before Congress that would arguably grant FERC the right to dictate the schedule for state administrative proceedings that involve intrastate natural gas pipeline transportation of LNG converted natural gas from LNG import terminals; and~~

~~WHEREAS, At a January 24, 2005, conference with the Senate Energy and Natural Resources Committee, FERC indicated that it wants~~

*WHEREAS, FERC's opposition to meaningful state and local involvement in LNG facility siting has led it to also seek legislation in Congress to grant FERC unambiguous control, including the power of eminent domain, over the siting of LNG import terminals; and*

*WHEREAS, There exists proposed federal legislation intended to grant FERC exclusive jurisdiction over all LNG facilities and to therefore preclude any state or local government from having any decisionmaking authority with respect to the siting of LNG facilities; and*

*WHEREAS, The proposed federal legislation, if enacted, would prohibit state or local officials from independently conducting safety inspections of LNG facilities and enforcing safety violations; and*

*WHEREAS, There is currently pending a proposal to construct and operate a LNG terminal at the Port of Long Beach, to be located on state tidelands operated by the City of Long Beach through the Port of Long Beach, as a public trust granted by the state; and*

*WHEREAS, If there were an accidental release or catastrophic event, such as a terrorist attack, upon a LNG terminal at the Port of Long Beach, it could have disastrous consequences; and*

*WHEREAS, States should be regulating the safety and siting of LNG facilities in their states, which do not involve interstate pipelines, because the states regulate the intrastate pipelines that interconnect with the LNG facilities; and*

*WHEREAS, States have a much better understanding than the FERC of the natural physical aspects of a location, such as the effects from a major earthquake on a proposed LNG facility; and*

*WHEREAS, To grant FERC exclusive control over the siting of LNG import terminals would be inconsistent with numerous federal regulatory systems in which Congress has respected the rights of states to protect their coastlines, to protect their environment, and to protect the safety of their citizens, including the Coastal Zone Management Act, the Natural Gas Pipeline Safety Act, the Clean Water Act, and the Clean Air Act; and*

*WHEREAS, To deprive citizens of a state forum within which to*

resolve concerns over safety and injury to the environment is contrary to the public interest; now, therefore, be it

Resolved by the Senate of the State of California, the Assembly thereof concurring, That the Legislature of the State of California memorializes the President and Congress to take necessary action to preserve state and local authority over the siting of ~~liquefied~~ *liquefied* natural gas facilities; and be it further

Resolved, That the Secretary of the Senate transmit copies of this resolution to the President of the United States, to all Members of the Congress of the United States, and to the Federal Energy Regulatory Commission.